IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

KASSAN KHALID MORGAN,	§	
Petitioner,	§	
	§	
	§	
V.	§	3:15-CV-00805-M-BK
	§	
WILLIAM STEPHENS, DIRECTOR	§	
TDCJ-CID,	§	
Respondent.	§	

ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. Petitioner filed objections, and the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made.

The Magistrate Judge recommended that the petition for writ of habeas corpus be transferred to the United States Court of Appeal for the Fifth Circuit as a successive application under 28 U.S.C. § 2244(b)(3). Petitioner contends that his habeas petition is not successive because the dismissal of his first section 2254 habeas petition as procedurally barred was not an adjudication on the merits. [Doc. 7 at 1]. He analogizes the dismissal in his case to a dismissal for failure to exhaust state court remedies. [Doc. 7 at 1-2]. Petitioner is incorrect. A procedural default dismissal, unlike a dismissal on exhaustion grounds, is a merits determination when examining whether a subsequent petition is successive. See <u>Adams v. Thaler</u>, 679 F.3d 312, 321-322 and n. 5 (5th Cir. 2012) (relying on "pre-AEDPA 'abusive of writ' doctrine" to hold that "[a] federal habeas court's rejection of a petitioner's constitutional claim because of state procedural default and a failure to show cause and prejudice must be regarded as a determination on the

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merits in examining whether a subsequent petition is successive.") (quoting *Bates v. Whitley*, 19 F.3d 1066, 1067 (5th Cir. 1994)).

Accordingly, Petitioner's objections are **OVERRULLED**, and the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that the successive habeas petition is **TRANSFERRED** to the United States Court of Appeals for the Fifth Circuit. See 28 U.S.C. § 2244(b)(3); 28 U.S.C. § 1631.

SO ORDERED this 2 day of April, 2015.

BARBARA M. G. LYNN

LIMITED STATES DISTRICT JUDGE NORTHERN DISTRICT OF TEXAS